

Chapter 133.

An Act to abolish the Death Penalty.

Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows :

Sec. 2, ch. 118,
R. S., amended.

SECT. 1. Section two of chapter one hundred and eighteen of the revised statutes is hereby amended, so as to read as follows :

Murder in first
degree, defined
and punished.

'SECT. 2. When murder is committed with express malice aforethought, or in perpetrating or attempting to perpetrate a crime punishable by imprisonment for life, or for an unlimited term of years, it shall be deemed murder of the first degree and punished by imprisonment at hard labor for life.'

Sec. 9, ch. 134,
R. S., amended.

SECT. 2. Section nine of chapter one hundred and thirty-four of the revised statutes is hereby amended, so as to read as follows :

In cases for-
merly capital,
persons in
prison, may be
bailed or dis-
charged, if not
indicted.

'SECT. 9. Any person in prison charged with a crime formerly capital and now punishable by imprisonment at hard labor for life, may be bailed or discharged if he is not indicted at the second term of the court in the county where the crime is alleged to have been committed, when there are two terms there in each year, but when there is only one term a year therein, and the accused has been in prison six months before the first term, and is not then indicted, he shall be bailed or discharged.'

Sec. 12,
amended.

SECT. 3. Section twelve of chapter one hundred and thirty-four of the revised statutes is hereby amended, so as to read as follows :

Jury for trials,
formerly capital,
how to be
impaneled.

'SECT. 12. When a person indicted for an offence formerly capital and now punishable by imprisonment at hard labor for life, is put upon his trial, the clerk, under the direction of the court, shall place the names of all the traverse jurors summoned and in attendance, in a box, upon separate tickets, and the names, after being mixed, shall be drawn from the box by the clerk, one at a time, for the purpose of constituting a jury of trial. All peremptory challenges, except as herein provided, and all other challenges and objections to the juror drawn, shall be made and determined, and the juror sworn or set aside, before another name is drawn, and so on until the panel is completed. The state shall not challenge more than five of the jurors peremptorily,

—challenges.

and the person indicted shall not challenge peremptorily more than twenty of the jurors while the panel is being formed; but he may, before the trial commences, challenge peremptorily, two of the jurors from the panel. The supreme judicial court may, by general rules, prescribe the mode of exercising the right of challenge from the panel in all criminal cases.'

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—rules by the
S. J. court.

SECT. 4. Section fourteen of chapter one hundred and thirty-four of the revised statutes is hereby amended, so as to read as follows:

Sec. 14,
amended.

SECT. 14. The clerk shall, without charge, furnish to any person indicted for a crime punishable by imprisonment in the state prison, a copy of the indictment; if he is indicted for a crime punishable by imprisonment in the state prison for life, he shall furnish a copy of the indictment; a list of the jurors returned, and process to obtain witnesses, to be summoned and paid at the expense of the state; if, for a crime punishable by imprisonment for a term of years, witnesses shall be summoned and paid at the expense of the state, only at the discretion of the court. Competent counsel shall be assigned by the court in cases formerly capital and now punishable by imprisonment at hard labor for life, when it appears that the accused has not sufficient means to employ counsel, and reasonable compensation, not exceeding one hundred and fifty dollars in all at any one trial, shall be allowed by the court to be paid out of the county treasury.'

Persons indicted
for felony, to be
furnished a copy
of indictment.—witnesses to
be summoned at
state's expense.—counsel may
be assigned in
cases formerly
capital, pay
limited to \$150.

SECT. 5. Section twenty-one of chapter one hundred and thirty-four of the revised statutes is hereby amended, so as to read as follows:

Sec. 21,
amended.

SECT. 21. The following oath shall be administered to jurors in cases formerly capital, and now punished by imprisonment at hard labor for life: "You swear, that you will well and truly try, and true deliverance make, between the state and the prisoner at the bar, whom you shall have in charge, according to your evidence. So help you God." In all other criminal cases, the following: "You swear, that you will well and truly try the issue between the state and the defendant, according to your evidence. So help you God." Any juror conscientiously scrupulous of taking an oath, may affirm in the mode described in section three.'

Juror's oath;
affirmations.—juror may
affirm.

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Sec. 24,
amended.

SECT. 6. Section twenty-four of chapter one hundred and thirty-four of the revised statutes is hereby amended, so as to read as follows :

When court may
postpone or
continue.

'SECT. 24. The trial of any criminal case, except one formerly capital and now punished by imprisonment for life, may be postponed by the court to a future day of the same term, or the jury may be discharged therefrom, and the case continued, if justice will thereby be promoted.'

In trials, for-
merly capital,
full copy of
evidence, shall
be preserved.

SECT. 7. In the trial of an indictment for any offence formerly capital, and now punished by imprisonment at hard labor for life, the judge presiding, shall, at the expense of the county, employ suitable means to preserve an accurate and full copy of the evidence ; and in case of conviction, he shall correct and certify such evidence to be a true copy of all the evidence in the case.

Convict, desiring
pardon or com-
mutation, may
present request
to justices of S.
J. court, asking
that application
therefor, be
made to the
governor, in his
behalf.

SECT. 8. Whenever any convict sentenced to imprisonment at hard labor for life, for an offence committed after this act takes effect, which was formerly capital, and is now made punishable by imprisonment at hard labor for life, desires to obtain a pardon or a commutation of such sentence, he may present a written request to the justices of the supreme judicial court, in term time or vacation, asking that application therefor be made to the governor in his behalf, and he shall therein set forth, specifically, the grounds on which such application for pardon or commutation of sentence is requested, and the facts which he expects to prove in support of the same, together with the names and residences of the witnesses by whom he expects to prove such facts ; and with such request, he shall present the affidavits of such witnesses, and a copy of all the evidence taken at the trial in which he was convicted, as provided in the preceding section.

If justices are
satisfied that
new evidence
has been dis-
covered, shall
appoint hear-
ing and order
notice.

SECT. 9. If, upon examination of said request and the affidavits therewith presented, said justices are of the opinion that new and material evidence has been discovered which was not known, and could not, by the use of due diligence, have been obtained at the time of the trial, and which would tend conclusively to show such convict innocent, notwithstanding the evidence taken at the trial, they shall appoint a time and place for a hearing thereon, and order notice to be given to the attorney general and to the county attorney of the county in which such convict was convicted, that they may appear in behalf of the state.

SECT. 10. At such hearing, no evidence shall be deemed pertinent, except such as has been discovered since the trial, and such as relates to material facts, tending to show that such convict was wrongfully or erroneously convicted, or that he is innocent.

At hearing, only new evidence shall be deemed pertinent.

SECT. 11. If, upon all the evidence, said justices are of the opinion that such convict was wrongfully convicted, or that he is innocent of the crime of which he was convicted, and that an application should be made for his pardon or for a commutation of his sentence, they shall so order, and thereupon the clerk of said court for the district in which such hearing is had, shall make up a record of the proceedings had on such request, and transmit a copy thereof, and of all the papers in the case, to the governor, together with an application to the governor made by him, in behalf of such person, under the order and direction of said justices, for such pardon or commutation of sentence.

If justices are of the opinion that application should be made for pardon, they shall so order.

—proceedings.

SECT. 12. On receipt of such application, and not otherwise, the governor may, with the advice and consent of the council, grant a pardon or a commutation of sentence, upon such conditions and with such restrictions and limitations as may be deemed proper, and to carry the same into effect may issue his warrant directed to all proper officers who shall serve and obey it.

Governor may grant pardon.

SECT. 13. Such provisions shall be made for the classification and labor of the convicts in state prison, that those convicted of murder in the first degree, shall not be employed or in any way associated with those convicted of other offences.

Persons in state prison for murder in first degree, shall not associate with other convicts.

SECT. 14. All acts and parts of acts inconsistent herewith, are hereby repealed.

Inconsistent acts, repealed.